

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

SUSAN L. WALLINGFORD and GREG )  
E. HAJEK, )

Plaintiffs, )

v. )

JEFF OLSON, in Individual and Official )  
Capacity, JEROME STEWART, in )  
Individual and Official Capacity, CITY )  
OF SCHUYLER, and COUNTY OF )  
COLFAX, )

Defendants. )  
\_\_\_\_\_ )

8:08CV57

ORDER

This matter is before the court on defendant County of Colfax's Motion to Dismiss, [Filing No. 15](#), defendant City of Schuyler's Motion to Dismiss, [Filing No. 23](#), defendants County of Colfax and Jeff Olson's Motion for Summary Judgment, [Filing No. 27](#), and plaintiffs' Motion to Continue Summary Judgment under Rule 56(f), [Filing No. 31](#).

Both motions to dismiss are based on Fed. R. Civ. P. 12(b)(6), failure to state a claim upon which relief can be granted. In their response to the defendants' motions to dismiss, the plaintiffs contend that their complaint does state a claim and they aver that amending their complaint will cure any and all defects.

Therefore, the court grants the plaintiffs' motion to amend. Plaintiffs are required to file within 10 days of the date of this order an amended complaint. Additionally, the court denies as premature defendant County of Colfax and Jeff Olson's Motion for Summary Judgment and plaintiffs' Motion to Continue Summary Judgment under Rule 56(f).

IT IS ORDERED:

1. Defendant County of Colfax's Motion to Dismiss, [Filing No. 15](#), is denied;
2. Defendant City of Schuyler's Motion to Dismiss, [Filing No. 23](#), is denied;
3. Plaintiffs shall file within 10 days of the date of this order an amended complaint;
4. Defendants County of Colfax and Jeff Olson's Motion for Summary Judgment, [Filing No. 27](#), is denied as premature; and
5. Plaintiffs' Motion to Continue Summary Judgment under Rule 56(f), [Filing No. 31](#), is denied as premature.

DATED this 21<sup>st</sup> day of May, 2008.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge